

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 11, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP1658-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2014CF525**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JAMES L. WRIGHT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

¶1 PER CURIAM. James Wright pled guilty to false imprisonment, resisting or obstructing an officer and felony bail jumping, all as a repeat offender. Wright appeals from the judgment convicting him and from the order denying his postconviction motion seeking withdrawal of his guilty plea to false imprisonment

because Wright neither admitted nor stipulated to a factual basis for the plea. The record conclusively demonstrates that, under the totality of the circumstances, there was a factual basis for Wright's guilty plea to false imprisonment. We affirm the judgment and order.

¶2 With regard to the false imprisonment charge, the criminal complaint alleged that police officers responded to a disturbance call at an address associated with Wright. A child at the address reported that Wright hit her mother and sat on her mother on the bed.<sup>1</sup> Wright was also violent with the child. The mother exited the residence, and Wright locked the door behind her. The child was afraid and wanted to leave the residence. The child was trapped in the apartment with Wright, and she twice tried to open the door, but Wright pushed her away from the door each time. The mother reported that she had an altercation with Wright in which she was injured.

¶3 At the plea hearing, Wright confirmed that he understood the plea agreement and had enough time to consider his choices and consult with counsel. With regard to the false imprisonment charge, the court informed Wright that he was charged with “intentionally restrain[ing] [the mother] without her consent, knowing you were acting without her consent, with knowledge that you did not have any lawful authority to do so.” Wright pled guilty to the charge. The court then found “sufficient evidence in the sworn complaint to warrant acceptance of” the pleas. The court did not elicit Wright's agreement to the factual basis for the plea.

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<sup>1</sup> In his reply brief, Wright argues that the complaint does not permit a reasonable inference that the mother was intentionally confined or restrained. We disagree, as stated in this opinion.

¶4 Postconviction, Wright moved to withdraw his guilty plea to false imprisonment.<sup>2</sup> The circuit court cited two grounds for denying the postconviction motion without a hearing. First, trial counsel's affidavit relating what Wright did or did not understand about the proceeding was hearsay, which the circuit court declined to consider. Second, the complaint stated a factual basis for false imprisonment of the mother: the child heard an altercation between her mother and Wright, the child entered the bedroom and found Wright sitting on her mother. The court concluded that the complaint stated a factual basis for a conviction for false imprisonment of the mother.

¶5 In support of his reconsideration motion, Wright offered his own affidavit. In that affidavit, he alleged that he did not falsely imprison the mother, he did not unlawfully confine or restrain her, and he did not understand the elements of false imprisonment.

¶6 At the reconsideration hearing, Wright clarified that he sought to withdraw all of his pleas because the court never asked either Wright or his counsel to agree to a factual basis or to the presence of a factual basis in the complaint. The court found that Wright's arguments elevated form over substance, the factual basis was apparent from the record and was discussed during the plea colloquy. The complaint alleged that Wright sat on top of the

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<sup>2</sup> Wright's postconviction motion focused solely on the false imprisonment charge involving the mother. However, the motion noted that the complaint charged false imprisonment in relation to the mother, but the information to which Wright pled charged false imprisonment in relation to the child. Wright did not seek relief from the circuit court relating to this inconsistency. Therefore, we do not address the inconsistency on appeal. We decide the issue presented by Wright which relates to false imprisonment of the mother.

mother so that she could not move away. The court concluded that Wright did not establish a manifest injustice warranting plea withdrawal. Wright appeals.

¶7 We review whether the circuit court misused its discretion when it denied Wright’s motion to withdraw his guilty plea to false imprisonment.<sup>3</sup> *State v. Cain*, 2012 WI 68, ¶20, 342 Wis. 2d 1, 816 N.W.2d 177. To withdraw a plea after sentencing, a defendant must establish by clear and convincing evidence that withdrawal is necessary to avoid a manifest injustice. *State v. Thomas*, 2000 WI 13, ¶16, 232 Wis. 2d 714, 605 N.W.2d 836. The absence of a sufficient factual basis for a plea can constitute a manifest injustice. *Id.*, ¶17. The issue before this court is whether the plea should be withdrawn, not whether the plea should have been accepted in the first instance. *Cain*, 342 Wis. 2d 1, ¶30. A circuit court looks to the totality of the circumstances to determine whether plea withdrawal is warranted, including the plea hearing, the sentencing hearing, defense counsel’s statements and other portions of the record to assess whether a manifest injustice will occur if the plea is not withdrawn. *Id.*, ¶31.

¶8 False imprisonment occurs when the defendant intentionally confines or restrains another without that person’s consent and with knowledge that he or she had no lawful authority to confine that person. WIS. STAT. § 940.30 (2013-14). If the victim has some reasonable means of escape, false imprisonment does not occur. *State v. C.V.C.*, 153 Wis. 2d 145, 154, 450 N.W.2d 463 (Ct. App. 1989). However, a victim does not have a reasonable means of escape “if the

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<sup>3</sup> Although the circuit court record suggests that Wright sought to withdraw all of his guilty pleas, the arguments in the circuit court and this court focus solely on the guilty plea to false imprisonment. We confine ourselves to this plea.

circumstances are such as to make it offensive to a [victim's] reasonable sense of decency or personal dignity.” *Id.* at 155 (citation omitted).

¶9 The complaint alleges that Wright sat on the mother, Wright locked the residence door and told the mother not to try to leave, and the mother expressed fear for her child once the mother managed to leave the residence. The complaint does not establish that the mother had a reasonable means of escape because she was forced to abandon her child to Wright, which was offensive to a reasonable sense of decency.

¶10 At sentencing, Wright took responsibility for his actions and stated that he “knew I wasn’t supposed to be over there.”

¶11 On this record and under the totality of the circumstances, the circuit court did not misuse its discretion when it denied Wright’s plea withdrawal motion. The complaint cited a factual basis for Wright’s guilty plea to false imprisonment. Therefore, avoiding a manifest injustice did not require plea withdrawal.

¶12 Wright next complains that the circuit court erred when it rejected as hearsay his trial counsel’s affidavit in support of Wright’s motion to withdraw his guilty plea. If error occurred, which we need not decide, the error was cured when the circuit court considered Wright’s own affidavit setting out substantially the same information as part of Wright’s motion for reconsideration.

¶13 Wright complains that he was not able to file a reply to the State’s response to his motion to withdraw his guilty plea. We do not address this issue because as part of his reconsideration motion, Wright filed an affidavit setting out

the grounds for relief, and the circuit court considered the affidavit. Wright placed his issues before the court.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

